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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/986,739      | 11/09/2001  | Orval Baskerville    | 1260P01US           | 5978             |

26131 7590 10/01/2003

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EXAMINER

NI, SUHAN

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2643

DATE MAILED: 10/01/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/986,739

Applicant(s)

BASKERVILLE, ORVAL

Examiner

Suhan Ni

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 November 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

1. The Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group **Art Unit 2643**.
2. This communication is responsive to the application filed 11/09/2001.

***Claim Objections***

3. Claim 28 is objected to because of the following informalities:

In line 2, "an acoustic conduit" is incorrect. Should it be "the acoustic conduit"?

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1-5 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Henderson (US-3,368,644).

Regarding claims 1-4 and, Henderson discloses an earpiece of a communication device, comprising: an earpiece having a tubular member (18) shaped to fit an ear canal; and a tubular filter (40, 50) having at least two sections, wherein each of sections has a different diameter as claimed.

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Regarding claim 5, Henderson further discloses the communication device, wherein the at least one of the sections has a conical configuration (Figs. (2-7) as claimed.

Regarding claims 7-9, Henderson further discloses the communication device, wherein a connector (28) of the earpiece is connected to the conduit (16) as claimed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6 and 10-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson (US-3,368,644).

Regarding claims 21, 23 and 43, Henderson discloses a communication device, comprising: an earpiece having a tubular member (18) shaped to fit an ear canal, and a tubular filter (40, 50) having a plurality of sections, each section having different diameter; an acoustic conduit (16) connected to the earpiece; and a chamber member (10) housing a miniature speaker (12) therein. But Henderson does not clearly teach a radio plug as claimed. Since providing a suitable means to connect the communication device to a radio is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide a suitable mean, such as a radio plug or a wireless connecting means for

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the communication device, in order to allow the user to hear directly or non-directly from a radio.

Regarding claim 22, Henderson further discloses the communication device, wherein the conduit is a flexible tube (16) as claimed.

Regarding claims 6 and 24-25, Henderson further discloses the communication device, wherein the at least one of the sections has a conical configuration. But Henderson does not clearly teach a 30-degree conical configuration as claimed. Since Henderson does not specially restrict the angle of conical configuration, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide a suitable angle, such as 30-degree, for the conical section of the of the device, in order to provide a comfortable earpiece for different user.

Regarding claims 26-27, Henderson further discloses the communication device, wherein the first section (46) of the filter is narrower than the member as claimed.

Regarding claims 28-30 and 42, Henderson further discloses the communication device, wherein a connector (28) of the earpiece is connected to the conduit (16) as claimed.

Regarding claims 10-19, 31-40 and 44-49, Henderson does not clearly teach a specific dimension of each element as claimed. Since Henderson does not specially restrict all the dimensions of the device, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide a suitable configuration, such as 0.3 mm for the diameter of the second section, for each element of the communication device, in order to provide a desirable , especially comfortable earpiece for each of different users.

Regarding claims 20 and 41, Henderson does not clearly teach a silicon material for making the device as claimed. Since providing a silicon housing for hearing device is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide a suitable material, such as silicon, for the member of the communication device, in order to provide a desirable , especially comfortable earpiece for each of different users.


***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is (703)-308-9322, and the number for fax machine is (703)-305-9508. The examiner can normally be reached on Monday through Thursday from 9:00 am to 7:30 pm. If it is necessary, the examiner's supervisor, **Curtis Kuntz**, can be reached at (703) 305-4708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 305-3900.

Suhan Ni  
Patent Examiner  
Art Unit 2643  
September 20, 2003

  
**SUHAN NI**  
**PATENT EXAMINER**